

## **Chapter 7**

### **Nonprofit Health Service Insurance Corporations**

#### **Part 1**

#### **General Provisions**

##### **31A-7-101 Definition.**

As used in this chapter, unless stated otherwise:

"Subscriber" means the person entitled by contract to health care benefits from a corporation licensed under this chapter. "Subscriber" is used interchangeably with "policyholder" in individual contracts or "certificate holder" in group contracts.

Amended by Chapter 91, 1987 General Session

Amended by Chapter 95, 1987 General Session

##### **31A-7-102 Scope.**

- (1) Domestic insurers authorized under former Title 31, Chapter 37, are, on July 1, 1986, automatically converted to domestic insurers authorized under this chapter. The commissioner may adopt any rules necessary to efficiently and safely effect the conversion.
- (2) Any nonprofit corporation incorporated under this chapter, or subject to this chapter under Subsection (1), and organized for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby hospital care, medical-surgical care, dental care, and other health services are made available to persons who become subscribers to such a plan or plans under a contract with the nonprofit corporation, are subject to the provisions of this chapter.
- (3) This chapter does not apply to persons licensed under:
  - (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
  - (b) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - (c) Chapter 9, Insurance Fraternal;
  - (d) Chapter 10, Annuities;
  - (e) Chapter 11, Motor Clubs;
  - (f) Chapter 13, Employee Welfare Funds and Plans; or
  - (g) Chapter 14, Foreign Insurers.

Amended by Chapter 20, 1995 General Session

##### **31A-7-103 Applicability of other provisions.**

- (1) Except for exemptions specifically granted under this title, nonprofit health service insurance corporations organized or operating under this chapter are subject to all of the provisions of this title.
- (2) Nonprofit health service corporations are exempt from the provisions of Chapter 5, Domestic Stock and Mutual Insurance Corporations, except where sections or parts are specifically referenced and made applicable in this chapter, in which case the referenced provisions under Chapter 5, Domestic Stock and Mutual Insurance Corporations, that apply to mutual corporations apply to nonprofit health service insurance corporations.
- (3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to nonprofit health service insurance corporations except as specifically made applicable by:

- (a) this chapter;
  - (b) a provision adopted by reference under this chapter; or
  - (c) a rule adopted by the commissioner to deal with corporate law issues of nonprofit health service insurance corporations which are not settled under this chapter.
- (4) Any insurer authorized under this chapter that is not in compliance with the applicable capital and surplus requirements, yet has assets in excess of its liabilities, has until July 1, 1988, to comply with the applicable capital and surplus requirements. One-half of any shortage in capital and surplus on July 1, 1986, shall be remedied by July 1, 1987.

Amended by Chapter 300, 2000 General Session

**31A-7-104 General corporate powers and procedures.**

- (1) Corporations organized or operating under this chapter have the powers specified under Section 31A-5-104.
- (2) Subject to the limitations upon subsidiary investment valuation otherwise stated under this title, corporations organized or operating under this chapter may invest in corporations organized for profit.
- (3) Corporations subject to the provisions of this chapter may enter into contracts for the rendering of hospital services, medical-surgical services, and other health services on behalf of any of their subscribers with hospitals maintained by the state, or by any of its political subdivisions, or maintained by a nonprofit corporation organized for hospital purposes, or with other corporations, associations, partnerships, or individuals furnishing hospital services, medical-surgical services, or other health services. This chapter does not require any corporation to contract or remain under contract with any individual, hospital, physician, or other provider of health services.

Amended by Chapter 91, 1987 General Session

**31A-7-105 Documents as evidence.**

Section 31A-5-105 applies to documents as evidence in corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

**31A-7-106 Unauthorized assumption of corporate power.**

Section 31A-5-106 applies to the unauthorized assumption of corporate power in corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

## **Part 2 Organization**

**31A-7-201 Organization, incorporation, and licensing.**

Chapter 5, Part 2, Organization of Corporations, governs the organization, incorporation, and licensing of nonprofit health service corporations with the following exceptions:

- (1) Section 16-6a-201 applies in place of Section 31A-5-202.
- (2) Sections 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203(2)(a).
- (3) The last sentence of Subsection 31A-5-203(2)(e) does not apply.

Amended by Chapter 90, 2004 General Session

### **31A-7-202 Members.**

Sections 16-6a-601 and 16-6a-602 apply to members of corporations organized or operating under this chapter. Sections 16-6a-701, 16-6a-702, 16-6a-704, 16-6a-711, and 16-6a-712 apply to corporations organized or operating under this chapter which have members.

Amended by Chapter 300, 2000 General Session

## **Part 3 Management**

### **31A-7-301 Principal office and registered agent.**

Section 31A-5-401 governs the location of the principal office and existence of a registered agent for corporations organized and operating under this chapter.

Amended by Chapter 204, 1986 General Session

### **31A-7-302 Annual report to policyholders.**

Every insurer organized or operating under this chapter shall send to each policyholder or electronically post on the insurer's public website an abbreviated annual report which contains basic financial and operating data, and information about important business and corporate developments.

Amended by Chapter 253, 2012 General Session

### **31A-7-303 Board of directors.**

- (1) Subject to other provisions under this section, Sections 16-6a-801 through 16-6a-805, and Sections 16-6a-810, 16-6a-812, 16-6a-814, 16-6a-815, and 16-6a-816 apply to the board of directors of insurers organized or operating under this chapter.
- (2) The property and lawful business of every corporation subject to this chapter shall be held and managed by a governing board of trustees or directors with the powers and authority as is necessary or incidental to the complete execution of the purposes of each corporation as limited by its articles of incorporation and bylaws. A board may not consist of less than five members. A majority of the directors shall be residents of Utah.
- (3) Any person employed by or receiving more than 10% of his income from a corporation licensed under this chapter, and any person related to that person within the second degree by blood or marriage, is an "insider." Insiders may not constitute a majority of the board of a corporation organized and operating under this chapter.
- (4) The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility to do so, except to the extent authorized by Section 31A-7-307.
- (5) Section 16-6a-814 applies to the place and notice of directors' meetings.

- (6) Any director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose.

Amended by Chapter 300, 2000 General Session

**31A-7-304 Waiver and consent.**

Sections 16-6a-813 and 16-6a-815 apply to waiver and consent in corporations organized or operating under this chapter.

Amended by Chapter 300, 2000 General Session

**31A-7-305 Supervision of management changes.**

Subsections 31A-5-410(1)(a) and 31A-5-410(3) apply to supervision and management changes in corporations organized and operating under this chapter. If a trustee is removed from the board of trustees in the manner specified under Subsection 31A-7-303(6), the action shall be reported to the commissioner within 10 days of the removal.

Amended by Chapter 91, 1987 General Session

**31A-7-306 Continuity of management in emergencies.**

Section 31A-5-411 applies to continuity of management in emergencies in corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

**31A-7-307 Committees of directors.**

- (1) If provided by the articles or bylaws of a corporation, the board of directors may, by a resolution adopted by a majority of the full board, designate one or more committees, each consisting of three or more directors, to serve at the pleasure of the board. The board may designate one or more directors as alternate members of any committee to substitute for any absent member at any meeting of the committee. The designation of a committee and delegation of authority to it does not relieve the board or any director of responsibility imposed upon it or him by law.
- (2)
- (a) Corporations organized and operating under this chapter shall have an audit committee and a nominating committee.
  - (b) A majority of the members of the audit and nominating committees may not be insiders as defined under Subsection 31A-7-303(3).
- (3) When the board is not in session, a committee may exercise the powers of the board in the management of the business and affairs of the corporation to the extent authorized in the resolution or in the articles or bylaws, except final action regarding:
- (a) compensation or indemnification of any person who is a director, principal officer, or one of the three most highly paid employees, and any benefits or payments requiring shareholder or policyholder approval;
  - (b) approval of any contract required to be approved by the board under Section 31A-7-309 or of any other transaction in which a director has a material interest adverse to the corporation;
  - (c) amendment of the articles or bylaws;
  - (d) corporate reorganization under Part 4, Reorganization;
  - (e) any other decision requiring shareholder or policyholder approval;

- (f) amendment or repeal of any action previously taken by the full board which by its terms is not subject to amendment or repeal by a committee;
  - (g) dividends or other distributions to shareholders or policyholders, other than in the routine implementation of policy determinations of the full board;
  - (h) selection of principal officers; and
  - (i) filling vacancies on the board or any committee created under Subsection (1) except that the articles or bylaws may provide for temporary appointments to fill vacancies on the board or any committee, the appointments to last no longer than the end of the next board meeting.
- (4) Subsection 31A-5-412(4) applies to the subsequent review provided in corporations organized and operating under this chapter.

Amended by Chapter 90, 2004 General Session

**31A-7-308 Interlocking directorates and other relationships.**

Section 31A-5-413 applies to interlocking directorates and other relationships in corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

**31A-7-309 Transactions in which directors and others are interested.**

Section 31A-5-414 applies to corporations organized and operating under this chapter, except that, for purposes of this chapter, Section 31A-5-414 does not preclude standard contracts for the provision of health care services with directors who are also providers of health care services.

Enacted by Chapter 242, 1985 General Session

**31A-7-310 Officers', directors', and employees' liability and indemnification.**

Section 31A-5-415 applies to officers', directors', and employees' liability and indemnification in corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

**31A-7-311 Executive compensation.**

Subsections 31A-5-416(4), (5), (6), and (7) apply to executive compensation in corporations organized and operating under this chapter.

Amended by Chapter 316, 1994 General Session

**31A-7-312 Exclusive management and exclusive agency contracts.**

Section 31A-5-417 applies to exclusive management and exclusive agency contracts in corporations organized and operating under this chapter, except that in this chapter, Subsection 31A-5-417(2) does not preclude exclusive agency contracts with controlled subsidiaries of the insurer organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

**31A-7-313 Books and records.**

Section 16-6a-1602 applies to the books and records of corporations organized and operating under this chapter.

Amended by Chapter 300, 2000 General Session

## **Part 4 Reorganization**

### **31A-7-401 Mergers and consolidations.**

Sections 31A-5-501 and 31A-5-503 apply to mergers and consolidations of corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

### **31A-7-402 Voluntary dissolution.**

Section 31A-5-504 applies to the voluntary dissolution of corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

### **31A-7-403 Conversion to a Title 31A, Chapter 5, mutual insurer.**

- (1) An insurer organized and operating under this chapter may be converted into a mutual insurer under Chapter 5, Domestic Stock and Mutual Insurance Corporations, as provided in this section.
- (2)
  - (a) The board shall pass a resolution that the conversion is not contrary to the interests of the policyholders specifying the reasons for and the purposes of the proposed conversion, and the manner in which the conversion is expected to affect policyholders, particularly the policyholders that are members.
  - (b) The board's resolution shall also set forth a plan of conversion which shall include:
    - (i) the articles of incorporation of the new Chapter 5, Domestic Stock and Mutual Insurance Corporations, mutual insurer, including a description of the classes of policyholders who, by virtue of being policyholders, will have an interest in the converted insurer;
    - (ii) the bylaws of the new Chapter 5, Domestic Stock and Mutual Insurance Corporations, mutual insurer;
    - (iii) a description of any changes in the insurer's mode of operations after conversion to a Chapter 5, Domestic Stock and Mutual Insurance Corporations, mutual insurer; and
    - (iv) any other items specified by rule.
- (3) The provisions of Chapter 16, Insurance Holding Companies, apply to the conversion of a Chapter 7, Nonprofit Health Service Insurance Corporations, insurer to a Chapter 5, Domestic Stock and Mutual Insurance Corporations, mutual insurance corporation.
- (4) The plan of conversion shall be submitted to the commissioner for approval, together with a projection of the planned or anticipated financial condition of the insurer for two years after the conversion.
- (5) The commissioner shall hold an adjudicative proceeding concerning the conversion application.

- (6) The commissioner shall approve the plan of conversion, unless he finds that the plan violates the law, is contrary to the interests of policyholders or the public, or would result in an unfair distribution of interest among the insurer's policyholders.
- (7)
- (a) Upon the commissioner approving the conversion under Subsection (6), the commissioner shall issue a new certificate of authority.
  - (b) The issuance of the certificate is the conversion, and upon issuance of the certificate the Chapter 7, Nonprofit Health Service Insurance Corporations, insurer at once becomes a mutual insurance corporation organized under and fully subject to Chapter 5, Domestic Stock and Mutual Insurance Corporations.
  - (c) The mutual insurer is considered to have been organized at the time the converted Chapter 7, Nonprofit Health Service Insurance Corporations, insurer was organized.
  - (d) Unless otherwise provided in the plan of conversion, the directors, officers, agents, and employees of the Chapter 7, Nonprofit Health Service Insurance Corporations, insurer shall continue in like capacity with the mutual insurance corporation.

Amended by Chapter 161, 1987 General Session

**31A-7-404 Transfer of business or assets.**

Section 31A-5-508 applies to the transfer of business or assets of corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

## **Part 5**

### **Miscellaneous Provisions**

**31A-7-501 Duties of officers, directors, agents, and employees.**

Section 31A-5-601 applies to the duties of officers, directors, agents, and employees of corporations organized and operating under this chapter.

Enacted by Chapter 242, 1985 General Session

**31A-7-502 Doing business in other states.**

Section 31A-5-602 applies to corporations organized and operating under this chapter doing business in other states.

Enacted by Chapter 242, 1985 General Session